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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEPHAN GEHRING, KRISNAWAN RAHARDJA,
and CARLTON J. SPARRELL

Appeal 2009-007391
Application 09/480,837
Technology Center 2400

Before CARLA M. KRIVAK, THOMAS S. HAHN, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejections of claims 1-20:

Claims 1-20 stand rejected under 35 U.S.C. § 112, ¶ 1 as failing to comply with the enablement requirement.

Claims 1, 9 and 20 stand rejected under 35 U.S.C. §101 for being directed to non-statutory subject matter.

Claims 1-4, 9, 14, and 20 are listed or referenced as being rejected under 35 U.S.C. § 103(a) as obvious over Aiello (US 6,275,544 B1; issued Aug. 14, 2001; filed Nov. 3, 1999) in view of Hulyalkar (US 6,347,084 B1; issued Feb. 12, 2002; filed May 28, 1998).¹

We reverse.

STATEMENT OF THE CASE

Independent claim 1 is illustrative of Appellants' claimed invention:

1. An ultra wide band network, comprising:
 - a master device and a plurality of slave devices in network communication with said master device, the communication using a Time Division Multiple Access frame comprising a multiplicity of ultra wide band signals;
 - a Medium Access Control layer protocol for transmission and reception of network packets, comprising:
 - a Time Division Multiple Access frame definition having, a start-of-frame section,

¹ The Examiner initially states, “[c]laim 1 [sic] rejected under 35 U.S.C. 103(a) as being unpatentable over Aiello et al. (U.S. Patent No. 6,275,544) in view of Hulyalkar (U.S. Patent No. 6,347,084)” (Ans. 4). The body of the rejection additionally makes reference to claims 1, 9, and 20 (Ans. 4), claim 14 (Ans. 5), and claims 2-4 (Ans. 7).

- a command section,
- a data slot section containing a plurality of variable length slots,
- a synchronization slot, and
- a timestamp slot.

(App. Br. 23).

We address the appealed rejections separately.

THE § 112, ¶ 1 REJECTION

The Examiner finds

The amended specification and the existing specification does [sic: do] not enable one skilled in the art to make and/or use the invention of an ultra wide band network using a TDMA [Time Division Multiple Access] frame format. How does ultra wide band network enable TDMA? In other words, the specification does not describe [sic: the invention?] in such a way to enable how the ultra wide band network implements the TDMA.

(Ans. 3) (emphasis omitted). In the RESPONSE TO ARGUMENT section of the Answer, the Examiner reiterates, “the Applicant’s specification does not enable possessing sufficient evidence to make and/or use the ultra wideband network using a TDMA frame format” (Ans. 7).

The Examiner has not provided any technical basis or explanation in support of the conclusion that one of ordinary skill in the art would not be reasonably apprised as to how to make or use the claimed subject matter. *In re Wright*, 999 F.2d 1557, 1562 (Fed. Cir. 1993) (An Examiner must provide a reasonable explanation as to why a claim is inadequately enabled by the disclosure.); *see also In re Wands*, 858 F.2d 731, 736-37 (Fed. Cir. 1988). Accordingly we do not sustain the rejection under 35 U.S.C. § 112, ¶ 1.

THE § 101 REJECTION

The Examiner concludes that independent claims 1, 9, and 20 do not set forth patentable subject matter under 35 U.S.C. § 101 because

the claims seek for patent protection of a signal. Moreover, it does not appear that claims reciting a multiplicity of ultra wide band signal [sic: signals] encoded with functional descriptive material falls within any of the categories of patentable subject matter set forth in § 101. The claims do not have a practical application by physical transformation or a practical application that produces a useful, tangible and concrete result.

(Ans. 4-5).

This finding, that the claims are directed to signals, *per se*, is inaccurate. As noted by Appellants (App. Br. 19-20), claims 1, 9, and 20 are all directed to a network comprising a master device and a plurality of slave devices. We, therefore, do not sustain the rejection under 35 U.S.C. § 101.

THE § 103 REJECTION

As noted above in this Decision's Summary section, claims 1-4, 9, 14, and 20 are listed or referenced as standing rejected under 35 U.S.C. § 103(a) as obvious over Aiello in view of Hulyalkar. Appellants traverse this rejection on the basis that Aiello does not constitute prior art (App. Br. 22). Appellants base this conclusion on the fact that the present application claims priority as a continuation-in-part application from Gehring (US 6,944,148 B1; issued Sep. 13, 2005; filed Sep. 10, 1999), and because Gehring's filing date precedes Aiello's filing date of November 3, 1999 (*id.*).

The Examiner does not respond to this contention. We, therefore, do not sustain the rejection under 35 U.S.C. § 103, regardless of which claims the Examiner may have intended to have included within the rejection.

DECISION

The Examiner's decision rejecting claims 1-20 is reversed.

REVERSED

gvw